

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

UNITED STATES OF AMERICA,
Plaintiff,

v.

JUAN MARTINEZ-ROSALES,
Defendant.

No. CR-07-6046-FVS

ORDER DENYING MOTION FOR
REDUCTION OF SENTENCE

THIS MATTER comes before the Court based upon the defendant's motion to modify the judgment.

BACKGROUND

During January of 2008, the defendant pleaded guilty to the crime of Alien in the United States after Deportation. 8 U.S.C. § 1326. He entered the guilty plea pursuant to a "fast track" plea agreement. According to its terms, the government agreed to recommend a three-level downward departure at sentencing; the defendant agreed to refrain from asking for more than a three-level departure. At sentencing, the parties fulfilled their respective commitments under the plea agreement. The Court sentenced the defendant to 41 months imprisonment based upon his plea of guilty. On August 4, 2008, he filed a motion under 28 U.S.C. § 2255 asking that his sentence be reduced. In essence, he argues that, since he is an illegal alien, he

1 will suffer extraordinary hardship while in prison.

2 **RULING**

3 The defendant's motion for a reduction is denied for two reasons.
4 First, the relief he is seeking is not available under 28 U.S.C. §
5 2255. Second, he agreed to a three-level departure from the Guideline
6 range, and nothing more. By making this motion, he may be violating
7 his plea agreement. The Court need not resolve that issue because §
8 2255 does not permit the Court to grant the relief which he is
9 seeking.
10

11 **IT IS HEREBY ORDERED:**

12 1. The defendant's motion for reduction of sentence (**Ct. Rec. 35**)
13 **is denied.**

14 2. The Court will not consider a motion for reconsideration.

15 **IT IS SO ORDERED.** The District Court Executive is hereby
16 directed to enter this order and furnish copies to the defendant and
17 to counsel for the government.
18

19 **DATED** this 9th day of October, 2008.

20 s/ Fred Van Sickle
21 Fred Van Sickle
22 Senior United States District Judge
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